

Subpart B—Compliance with Core Principles

§ 39.9 Scope.

The provisions of this subpart B apply to any derivatives clearing organization, as defined under section 1a(15) of the Act and § 1.3(d) of this chapter, which is registered or deemed to be registered with the Commission as a derivatives clearing organization, is required to register as such with the Commission pursuant to section 5b(a) of the Act, or which voluntarily registers as such with the Commission pursuant to section 5b(b) or otherwise.

§ 39.10 Compliance with core principles.

(a) To be registered and to maintain registration as a derivatives clearing organization, a derivatives clearing organization shall comply with each core principle set forth in section 5b(c)(2) of the Act and any requirement that the Commission may impose by rule or regulation pursuant to section 8a(5) of the Act; and

(b) Subject to any rule or regulation prescribed by the Commission, a registered derivatives clearing organization shall have reasonable discretion in establishing the manner by which it complies with each core principle.

(c) *Chief compliance officer*—(1) *Designation*. Each derivatives clearing organization shall establish the position of chief compliance officer, designate an individual to serve as the chief compliance officer, and provide the chief compliance officer with the full responsibility and authority to develop and enforce, in consultation with the board of directors or the senior officer, appropriate compliance policies and procedures, to fulfill the duties set forth in the Act and Commission regulations.

(i) The individual designated to serve as chief compliance officer shall have the background and skills appropriate for fulfilling the responsibilities of the position. No individual who would be disqualified from registration under sections 8a(2) or 8a(3) of the Act may serve as a chief compliance officer.

(ii) The chief compliance officer shall report to the board of directors or the senior officer of the derivatives clearing organization. The board of direc-

tors or the senior officer shall approve the compensation of the chief compliance officer.

(iii) The chief compliance officer shall meet with the board of directors or the senior officer at least once a year.

(iv) A change in the designation of the individual serving as the chief compliance officer of the derivatives clearing organization shall be reported to the Commission in accordance with the requirements of § 39.19(c)(4)(ix) of this part.

(2) *Chief compliance officer duties*. The chief compliance officer's duties shall include, but are not limited to:

(i) Reviewing the derivatives clearing organization's compliance with the core principles set forth in section 5b of the Act, and the Commission's regulations thereunder;

(ii) In consultation with the board of directors or the senior officer, resolving any conflicts of interest that may arise;

(iii) Establishing and administering written policies and procedures reasonably designed to prevent violation of the Act;

(iv) Taking reasonable steps to ensure compliance with the Act and Commission regulations relating to agreements, contracts, or transactions, and with Commission regulations prescribed under section 5b of the Act;

(v) Establishing procedures for the remediation of noncompliance issues identified by the chief compliance officer through any compliance office review, look-back, internal or external audit finding, self-reported error, or validated complaint; and

(vi) Establishing and following appropriate procedures for the handling, management response, remediation, retesting, and closing of noncompliance issues.

(3) *Annual report*. The chief compliance officer shall, not less than annually, prepare and sign a written report that covers the most recently completed fiscal year of the derivatives clearing organization, and provide the annual report to the board of directors or the senior officer. The annual report shall, at a minimum:

(i) Contain a description of the derivatives clearing organization's written policies and procedures, including the code of ethics and conflict of interest policies;

(ii) Review each core principle and applicable Commission regulation, and with respect to each:

(A) Identify the compliance policies and procedures that are designed to ensure compliance with the core principle;

(B) Provide an assessment as to the effectiveness of these policies and procedures;

(C) Discuss areas for improvement, and recommend potential or prospective changes or improvements to the derivatives clearing organization's compliance program and resources allocated to compliance;

(iii) List any material changes to compliance policies and procedures since the last annual report;

(iv) Describe the financial, managerial, and operational resources set aside for compliance with the Act and Commission regulations; and

(v) Describe any material compliance matters, including incidents of non-compliance, since the date of the last annual report and describe the corresponding action taken.

(4) *Submission of annual report to the Commission.* (i) Prior to submitting the annual report to the Commission, the chief compliance officer shall provide the annual report to the board of directors or the senior officer of the derivatives clearing organization for review. Submission of the report to the board of directors or the senior officer shall be recorded in the board minutes or otherwise, as evidence of compliance with this requirement.

(ii) The annual report shall be submitted electronically to the Secretary of the Commission in the format and manner specified by the Commission not more than 90 days after the end of the derivatives clearing organization's fiscal year, concurrently with submission of the fiscal year-end audited financial statement that is required to be furnished to the Commission pursuant to § 39.19(c)(3)(ii) of this part. The report shall include a certification by the chief compliance officer that, to the best of his or her knowledge and

reasonable belief, and under penalty of law, the annual report is accurate and complete.

(iii) The derivatives clearing organization shall promptly submit an amended annual report if material errors or omissions in the report are identified after submission. An amendment must contain the certification required under paragraph (c)(4)(ii) of this section.

(iv) A derivatives clearing organization may request from the Commission an extension of time to submit its annual report in accordance with § 39.19(c)(3) of this part.

(5) *Recordkeeping.* (i) The derivatives clearing organization shall maintain:

(A) A copy of all compliance policies and procedures and all other policies and procedures adopted in furtherance of compliance with the Act and Commission regulations;

(B) Copies of materials, including written reports provided to the board of directors or the senior officer in connection with the review of the annual report under paragraph (c)(4)(i) of this section; and

(C) Any records relevant to the annual report, including, but not limited to, work papers and other documents that form the basis of the report, and memoranda, correspondence, other documents, and records that are created, sent, or received in connection with the annual report and contain conclusions, opinions, analyses, or financial data related to the annual report.

(ii) The derivatives clearing organization shall maintain records in accordance with § 1.31 of this chapter and § 39.20 of this part.

§ 39.11 Financial resources.

(a) *General.* A derivatives clearing organization shall maintain financial resources sufficient to cover its exposures with a high degree of confidence and to enable it to perform its functions in compliance with the core principles set out in section 5b of the Act. A derivatives clearing organization shall identify and adequately manage its general business risks and hold sufficient liquid resources to cover potential business losses that are not related to clearing members' defaults, so that